

STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE:

OPERATION BY KAPSTONE CHARLESTON
KRAFT, LLC PURSUANT TO S.C. CODE ANN. §
58-3-240

193976
BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: - - - - -

ND-2008-4-A

(Please type or print)

Submitted by: John J. Pringle, Jr.

Address: Ellis, Lawhorne & Sims, PA

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: Informational Filing - Non-Docketed Matter

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☒ Water/Sewer
☐ Administrative Matter
☐ Other: _____

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input checked="" type="checkbox"/> Other: Informational |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | Filing _____ |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

John J. Pringle, Jr.
Direct dial: 803/343-1270
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RECEIVED
JUL 18 2008
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

July 18, 2008

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Operation by Kapstone Charleston Kraft, LLC
pursuant to S.C. Code Ann. § 58-3-240
ELS File No. 1487-11578

Dear Mr. Terreni:

On behalf of Kapstone Charleston Kraft, LLC ("KS-SC"), and pursuant to S.C. Code Ann. § 58-3-240(C), I am filing concurrently with this letter under seal the Reciprocal Plant Operating Agreement ("RPOA") executed by and between KS-SC and MeadWestvaco South Carolina, LLC ("MV-SC") and made effective July 1, 2008. As set out herein, KS-SC is notifying the South Carolina Public Service Commission (the "Commission") and the South Carolina Office of Regulatory Staff ("ORS") of its operation under the "industrial park exception" found in S.C. Code Ann. § 58-3-240, and filing the RPOA with the Commission and the ORS for informational purposes pursuant to that statute. As such, KS-SC considers this filing to be a non-docketed matter.

BACKGROUND PRIOR TO JULY 1, 2008

MeadWestvaco South Carolina LLC ("MV-SC"), a subsidiary of MeadWestvaco Corporation ("MeadWestvaco"), prior to July 1, 2008 was the sole owner and operator of several industrial facilities located in North Charleston on the Cooper River (the "Property"). The facilities on the Property include a paper mill (the "Mill"), a specialty chemicals facility (the "MCF") and a crude tall oil facility (the "CTO Plant").

These facilities are highly interconnected, share some assets, and exchange a number of goods and services. For example, the MCF refines tall oil soap, a byproduct recovered from the Mill, into rosin and fatty acids, which are then used for various applications. The MCF also makes products from the lignin found in spent pulping liquor received from the Mill. Additionally, the CTO Plant converts soap skimmings received from the Mill into crude tall oil.

The Mill treats and discharges wastewater of various streams created on the Property pursuant to an NPDES permit issued by the South Carolina Department of Health and Environmental Control ("DHEC"). The Mill treats wastewater that it creates, as well as wastewater created by the MCF and the CTO Plant. In addition, the Mill provides water and steam to the MCF and the CTO Plant. MeadWestvaco is not, and has never been, a "public utility" as that term is used in S.C. Code Ann. § 58-5-10. MeadWestvaco operated these facilities on the Property for more than forty years.

Prior to July 1, 2008, MeadWestvaco and SCANA were the sole members and owners of a limited liability company called Cogen South, LLC ("Cogen"). Cogen owns and operates a cogeneration facility (the "Cogen Facility") located on the Property that generates steam and mechanical energy. Cogen holds a certificate of public convenience and necessity to provide steam (heat) service granted by the Commission via Order No. 1996-433 issued in Docket No. 96-189-E. Cogen produces steam for use at the Mill, the MCF and the CTO Plant. Cogen also provides steam for conversion into mechanical energy, and sells this mechanical energy to SCE&G for the generation of electricity. Prior to July 1, 2008, Cogen leased the property on which the Cogen Facility is located from MeadWestvaco.

THE TRANSACTION

On July 1, 2008, MeadWestvaco and MWV-SC entered into a transaction with Kapstone Paper and Packaging Corporation ("Kapstone") and KS-SC, an acquisition subsidiary of Kapstone. Pursuant to the transaction, KS-SC purchased the Mill from MeadWestvaco and MWV-SC, as well as the real property on which the CTO Plant is located. Additionally, KS-SC purchased both SCANA's membership interest in Cogen, and MeadWestvaco's membership interest in Cogen.

Accordingly, MWV- SC continues to own and operate the MCF and the CTO plant. MVW-SC leases the land on which the CTO Plant is located from KS-SC. Cogen continues to operate the Cogen Facility, with KS-SC as its single member, and leases the real property on which the Cogen Facility is located from KS-SC.

THE PROVISION OF UTILITY SERVICES FOLLOWING THE CLOSE OF THE TRANSACTION

The Mill continues to provide the same services, (including the provision of water, wastewater treatment, and steam) to the MCF, the CTO Plant, the Cogen Facility, and to the Mill itself, pursuant to the same physical arrangement that existed prior to KS-SC's ownership of the Mill. Now, however, KS-SC provides these utility services to MWV-SC and Cogen, as well as to itself. KS-SC holds the NPDES permit authorizing treatment and discharge of wastewater. KS-SC does not and will not provide any utility services outside the Property.

Cogen continues to exist (with KS-SC as its sole member) and the Cogen Facility provides the same services. Specifically, Cogen provides steam for use by KS-SC and MWV-SC, and provides mechanical energy to SCE&G for the generation of electricity.

THE RPOA

The parties have memorialized the terms and conditions of their post-closing relationship in the RPOA, which has been filed under seal with a Motion requesting confidential treatment of same. The RPOA describes the framework pursuant to which KS-SC, MWV-SC, and Cogen continue the arrangements that existed prior to the close for the transaction. The RPOA sets out the terms and conditions for the provision of certain utility services on the Property.

The particular provisions of the RPOA addressing utility services are Sections 4.1 and 7.8 (Steam), Sections 4.2 and 7.9 (Water), and Sections 5.1 (and accompanying Schedule 5.1) and 7.15 (Wastewater Treatment Services). The RPOA represents an arms-length agreement between sophisticated business entities, with numerous provisions that allow the parties to protect their interests. For example, the RPOA provides for service level failures and appropriate remedies and penalties (Section 7.16), the right to inspect records (Section 7.18), the ability to meet and discuss adjustments and possible changes to the parties' agreements (Section 7.20), the requirement that both parties carry insurance (Section 11.1), Indemnification provisions (Article 14), and detailed dispute resolution (Section 15.4) and arbitration (Section 15.5) provisions.

KS-SC has provided the ORS with the materials and information described herein, and the ORS has reviewed the provisions of the RPOA.

APPLICABLE LAW

S.C. Code Ann. § 58-3-240 provides:

(A) As used in this section:

(1) "Privately-owned industrial park" means a privately- owned tract of real property which is used solely for industrial uses, in which the provider of utility services owns or operates an industrial premises and owns or operates facilities for the provision of utility services and on which there is located one or more industrial users." Privately-owned industrial park" also means those additional tracts as may be subsequently incorporated into the industrial park.

(2) "Industrial premises" means a building, structure, plant, or facility which is located in a privately-owned industrial park and is owned or leased by an industrial user.

(3) "Industrial user" means any person, corporation, or association which is engaged in the business of manufacturing, processing, assembling, fabricating, or related work.

(4) "Provider of utility services" means a person, corporation, or association, other than a regulated public utility or its affiliates, that offers or provides, or both, utility services to the public or any portion of it outside a privately-owned industrial park, which provides any or all of those services which are defined in Chapters 5 and 7 of this title, excluding gas, and subject to regulation by the commission and where the services are provided to an industrial user in a privately-owned industrial park.

(5) "Jurisdictional utilities" means those persons, corporations, associations, or political subdivisions which provide services subject to the jurisdiction of the commission under Chapters 5 and 7 of this title, excluding gas.

(B) The provisions of Chapters 5 and 7 of this title, excluding gas, are not applicable to the provision of utility services to industrial users of these services where the industrial users are located in a privately-owned industrial park where the provider of utility services and the industrial user have agreed in writing to the terms and conditions for the provision of utility services and where all jurisdictional utilities which would have a right to provide any or all of the utility services have agreed in writing to waive their right to further notice and opportunity for hearing with respect to the written agreement and the provision of the services under the terms of the agreement.

(C) Within twenty days after the execution of a written agreement between a provider of utility services and an industrial user pursuant to subsection (B), the provider of utility services must file with the commission and provide to the Office of Regulatory Staff, for information only, the written agreement and all waivers executed by jurisdictional utilities pursuant to subsection (B).

DESCRIPTION OF KS-SC'S OPERATION UNDER THE INDUSTRIAL PARK EXCEPTION

The Property described above is a "privately-owned industrial park" pursuant to S.C. Code Ann. § 58-3-240(A)(1). The Property is privately-owned and used solely for industrial uses. These industrial uses are described above. KS-SC (the provider of utility services) owns the Mill (an industrial premise). Several industrial users (KS-SC, MWV-SC, Cogen) are located on the Property.

The Mill, the MCF, the CTO Plant, and the Cogen Facility are all "industrial premises" pursuant to S.C. Code Ann. § 58-3-240(A)(2). All are facilities and/or plants located on the Property, and all are owned by industrial users.

MWV-SC, KS-SC, and Cogen each is an "industrial user" pursuant to S.C. Code Ann. § 58-3-240(A)(3). MWV-SC, by virtue of its operation of the MCF and the CTO Plant, continues to be an "industrial user". Cogen is also an "industrial user" due to its operations in the creation and processing of steam and mechanical energy. Similarly, KS-SC, which owns and operates the kraft paper Mill, is an "industrial user".

The Honorable Charles L.A. Terreni

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KS-SC is a "provider of utility services" pursuant to S.C. Code Ann. § 58-3-240(A)(4) by virtue of the steam, water and wastewater services that KS-SC provides to MWV-SC and Cogen. KS-SC does not and will not offer or provide any utility services to the public or any part of the public outside the Property. The steam, water and wastewater services provided by KS-SC are "services defined in Chapters 5 and 7" of Title 58 of the South Carolina Code of Laws. Moreover, KS-SC provides these utility services solely to industrial users on the Property.

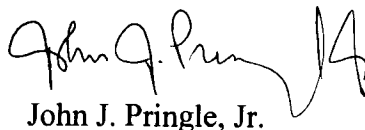
As such, the RPOA is an agreement "in writing to the terms and conditions for the provision of utility services" pursuant to S.C. Code Ann. § 58-3-240(B).

Pursuant to S.C. Code Annotated § 58-3-240(B), KS-SC has consulted with the ORS and determined that there are no "jurisdictional utilities which would have a right to provide any or all of the utility services" provided by KS-SC per the RPOA. In other words, there is no jurisdictional utility with a right to serve the Property that is being denied that right by virtue of this arrangement. Accordingly, there are no agreements referenced in § 58-3-240(B) by any such utilities waiving their right to further notice and opportunity for hearing.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Yours truly,

A handwritten signature in black ink, appearing to read "John J. Pringle, Jr.", followed by a large, stylized flourish or "J" shape.

John J. Pringle, Jr.

JJP/cr

cc: Nanette S. Edwards, Esquire

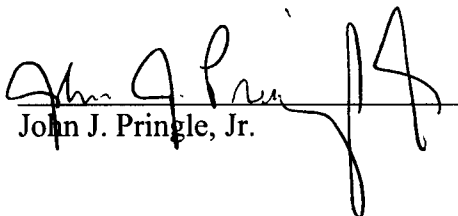
BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

IN RE: OPERATION BY KAPSTONE
CHARLESTON KRAFT, LLC
PURSUANT TO S.C. CODE ANN.
§ 58-3-40

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **July 18, 2008 Letter to The Honorable Charles L.A. Terreni** by hand-delivering same to the address as follows:

VIA HAND-DELIVERY
Nanette S. Edwards, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29211


John J. Pringle, Jr.

July 18, 2008
Columbia, South Carolina

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COMMISSION